



Department
for Education

The Early Years Foundation Stage (EYFS) Learning and Development Requirements: Guidance on Exemptions for Early Years Providers

**This guidance replaces any previously
published by the DfE and QCDA**

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About this guidance

This is a non-statutory guidance from the Department for Education. It replaces the Early Years Foundation Stage Exemptions guidance for Providers—level exemption dated 1st September 2011 and the QCDA guidance “Early Years Foundation Stage exemptions: Guidance for provider level exemptions” September 2008 QCA/08/3880.

Expiry/review date

This guidance will next be reviewed in 2016

What legislation does this guidance refer to?

The Childcare Act 2006 <http://www.legislation.gov.uk/ukpga/2006/21/contents>

The Early Years Foundation Stage Statutory Framework – the revised framework introduced in 2012 - <http://www.education.gov.uk/aboutdfe/advice/g00213120/eyfs-statutory-framework>

The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008 - <http://www.legislation.gov.uk/uksi/2008/1743/contents/made>

The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) (Amendment) Regulations 2012 - <http://www.legislation.gov.uk/search?title=&year=2012&number=2463&type=uksi>

Statutory Guidance for Local Authorities on the Delivery of Free Early Education for Three and Four Year Olds and Securing Sufficient Childcare - From September 2012 - <https://www.education.gov.uk/publications/standard/EarlyYearseducationandchildcare/Page1/DFE-00066-2012>

The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008 - <http://www.legislation.gov.uk/uksi/2008/1724/contents/made>

Who is this guidance for?

This guidance is for:

- Local Authorities
- School leaders, school staff and governing bodies in all maintained, non-maintained and independent school and all early years providers on the Early Years Register

Key points

- The 2012 EYFS has been in force since September 2012 and is mandatory for all maintained, non-maintained and independent schools and all early years providers on the Early Years Register.
- The new EYFS exemptions arrangements, introduces a new route for good quality independent schools, as well as maintaining a more streamlined 'established principles' route.
- The Childcare Act 2006 does not allow for any exemptions from the safeguarding and welfare requirements of the EYFS.

Introduction

1. Following an independent review¹ of the Early Years Foundation Stage (EYFS) statutory framework in 2010, and subsequent consultation in the summer of 2012, the Government has made changes to the arrangements for providers seeking exemptions from the learning and development requirements of the EYFS. The process for applying for an exemption has been simplified and a new route has been opened for independent schools to take up exemptions. This guidance explains how the process works for all providers wishing to take up exemptions, and outlines the conditions which must be met before exemptions will be granted.
2. The EYFS statutory framework² sets out both the learning and development requirements, and the safeguarding and welfare requirements. The *Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008*³ provide for the Secretary of State to grant exemptions to providers from all or part of the learning and development requirements set out in the EYFS, in the circumstances set out in the regulations. The 2008 regulations have been amended to allow for changes to the exemptions process to be introduced⁴. The 2008 regulations, as amended, continue to allow exemptions for individual children from all or part of the learning and development requirements, in prescribed circumstances. Please note: the Childcare Act 2006 does not allow for any exemptions from the safeguarding and welfare requirements of the EYFS.
3. All providers across maintained schools, non-maintained schools, independent schools and all providers on the Early Years Register⁵, must deliver the EYFS in full unless an exemption has been granted.
4. “Must” is used in this Guidance to denote provider actions that are legally required under the 2008 regulations, as amended, and the Direction from the Secretary of State made under those regulations. “Should” denotes provider actions that are expected or recommended by the Department but are not legal requirements. What exemptions are available?

¹ EYFS Independent Review <http://www.education.gov.uk/tickellreview>

² EYFS -

<http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/education/a0068102/early-years-foundation-stage-eyfs>

³ S.I.2008/1743, made under the power in section 46 of the Childcare Act 2006

⁴ The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) (Amendment) Regulations 2012 – S.I.2012/2463 which comes into force on 26 October 2012

<http://www.legislation.gov.uk/search?title=&year=2012&number=2463&type=uksi>

⁵ The Childcare (Exemptions from Registration) Order 2008 (S.I.2008/979) specifies the circumstances in which providers are not required to register.

What exemptions are available?

5. The Secretary of State for Education may direct that there is an exemption from some or all of the learning and development requirements in one of two circumstances prescribed in the 2008 regulations, as amended:
 - a. When the provider is a **registered independent school** (but not an Academy including a Free School) and meets the relevant conditions set by the Secretary of State. Exemptions will only be granted for pupils aged 3 upwards⁶. This will be referred to in this guidance as the 'independent schools route' to EYFS exemptions.
 - b. When the provision is **governed by established principles** relating to the learning and development of young children and those principles cannot be reconciled with an element or elements of the EYFS learning and development requirements. This will be referred to in the guidance as the 'established principles route' to EYFS exemptions. Again, the provider will need to satisfy the relevant conditions.
6. Exemptions are no longer available for providers who are temporarily unable to deliver the full learning and development requirements. However, exemptions are still available for individual children.⁷
7. Under the independent schools route, exemptions will be granted in full against all the learning and development requirements of the EYFS. Under the established principles route, exemptions can be granted, and modifications can be made, against the learning and development requirements, which in turn may be classified into education programmes, early learning goals and assessment arrangements.

⁶ But see paragraph 8 in relation to rising 3s

⁷ <http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/education/a0068102/early-years-foundation-stage-eyfs>

The independent schools route

8. Exemptions under the independent schools route will be granted via a Direction made by the Secretary of State directing that all independent schools (but not Academies, which includes Free Schools) can take up an exemption from all the learning and development requirements⁸ for children aged 3 and over (although pupils aged 'rising 3', that is children who will turn 3 within the first term that they attend the school, should be treated in the same way as 3-year-olds)⁹, provided that they meet the conditions set out in the Direction. A copy of the draft Direction is provided at **Annex C**. The final Direction will be made once the amended regulations come into force on 26 October 2012. The conditions are as follows:

8.1 Quality threshold - Quality is determined by the School's **most recent** inspection report:

- i. for a school where this report still contains a separate EYFS judgment, the school must have received a judgment of 'good' or better against 'overall effectiveness of the EYFS';
- ii. for a school where this report does not include a separate EYFS judgment, the school must have received a judgment of 'good' or better against parts 1 ('quality of education provided') and 2 ('spiritual, moral, social and cultural development of pupils') of the Independent Schools Standards (ISS)¹⁰.

8.1.1 Additionally for any exemption taken up where the most recent inspection report dates after **1st January 2013**, the report must show that the school meets any standard under Part 1 of the Independent School Standards Regulations relating to the education of children below compulsory school age.¹¹ (Note: Inspection reports may only comment if this standard has not been met rather than commenting that it has been met. If there are no comments, schools should assume it has been met, but may wish to refer to their relevant inspectorate for confirmation.)

8.2 Seeking parents' views/ keeping parents informed - Schools must seek the view of parents as to whether they should take up an exemption. This should include informing parents of any implications for free entitlement funding. More information on this is given in the 'local authority' section of this guidance on

⁸ Independent schools that take up full exemption from the EYFS learning and development requirements are still able to practise in a way that meets the EYFS learning and development requirements but they will be classified officially as exempt and will not be subject to local authority moderation. Inspectors will assess against the Independent Schools Standards rather than the EYFS learning and development requirements. Exempted independent schools will all continue to be assessed against the EYFS welfare requirements.

⁹ The Direction extends only to independent schools. It does not extend to a nursery that maybe on the same site as the independent school but is not part of the independent school.

¹⁰ SI 2010/1997, as amended by SI 2012/979

¹¹ Subject to regulatory and Parliamentary approvals, regulations amending the Independent School Standards (England) Regulations 2010 (SI 2010/1997, as amended by SI 2012/979) are expected to come into force on 1 January 2013. It is expected that a new standard will require that "where the school has pupils below compulsory school age, [there is] a programme of activities which is appropriate to their educational needs in relation to personal, social, emotional and physical development and communication and linguistic skills."

<http://www.education.gov.uk/schools/leadership/typesofschools/independent/b009053/registration>

page 12. It is also a condition that the school explains the outcome of the exemption notification to parents and makes it clear in information provided to parents and prospective parents that an exemption is in place.

8.3 Informing the local authority - If after seeking parents' views schools decide to proceed, they must inform the local authority that they intend to notify the Secretary of State, via the Department that they are taking up an exemption

8.4 Notifying the Department for Education – Schools must notify the Department that they wish to take up an exemption. Schools will be able to do this as part of a group (e.g. if they are members of an independent school association, the association may undertake to submit a block application on behalf of member schools) as well as individually.

9. Although **discussing funding free early education places with local authorities** is not a condition, it is recommended that schools discuss with their local authority whether there are any implications for them taking up an exemption in respect of any funding for delivery of free early education places before they seek the views of parents.
10. An exemption is 'taken up' on the date that the notification is made to the Department, provided that all the necessary conditions have been met. The Department will send an acknowledgement to confirm receipt of the notification. An exemption will remain valid for as long as the school continues to meet the conditions governing the quality of the provision, as set out in the Direction to schools. These conditions are set out above under the 'Quality Threshold' at 8.1i and 8.1.ii
11. A template that schools or associations can use for notifications can be found in **Annex A**. If schools do not meet the conditions above (including informing the relevant local authority and notifying the Department) they will **not** be legally exempted. Schools must also notify the Department and the local authority if, after taking up an exemption, they cease to meet the conditions above and therefore are no longer eligible for an exemption. Any school that is no longer eligible for an exemption will be required to meet the learning and development requirements of the EYFS.

The established principles route

12. Providers seeking full or partial exemption under the **established principles route** will need to submit applications for exemption to the Department for Education, which will then issue directions to individual schools if they are to be granted exemptions. Any early years provider can use this route if they come within the circumstances and meet the conditions below:

12.1 The provider's established principles cannot be reconciled with one or more of the learning and development requirements of the EYFS - The provider must demonstrate in their application that their early years provision is governed by established principles which cannot be reconciled with particular area/s of the EYFS learning and development requirements and for which they seek an exemption or modification. This would include identifying how these early learning goals, educational programmes, or aspects of the EYFS profile assessment, conflict with the setting's established principles.

12.2 Seeking parents' views/ keeping parents informed – Providers must seek the view of parents as to whether they should request an exemption. This should include informing parents of any implications for free entitlement funding. More information on this is given in the 'local authority' section of this guidance on page 12. If, subsequently, a direction is issued by the Department exempting the provision in full or in part, the direction will make it a condition that the school explains the outcome of the exemption to parents and makes it clear in information provided to parents and prospective parents that an exemption is in place.

12.3 Informing the local authority – If after seeking parents' views they decide to proceed, they must inform the local authority that they are applying for an exemption.

12.4 Requesting a direction for exemption – The Provider must request a direction from the Department in order to be exempt from part or all of the EYFS learning and development requirements including the profile assessment. The application form can be found at **Annex B**.

13. Although **discussing funding free early education places with local authorities** is not a condition, it is recommended that schools discuss with their local authority whether there are any implications for them taking up an exemption in respect of any funding for delivery of free early education places before they seek the views of parents.
14. If an exemption is granted, the effective date for that exemption will be the date of the letter in which the Department's decision is relayed to the provider. During the period between applying and receiving the Department's response, the provider is not exempt from the EYFS learning and development requirements.

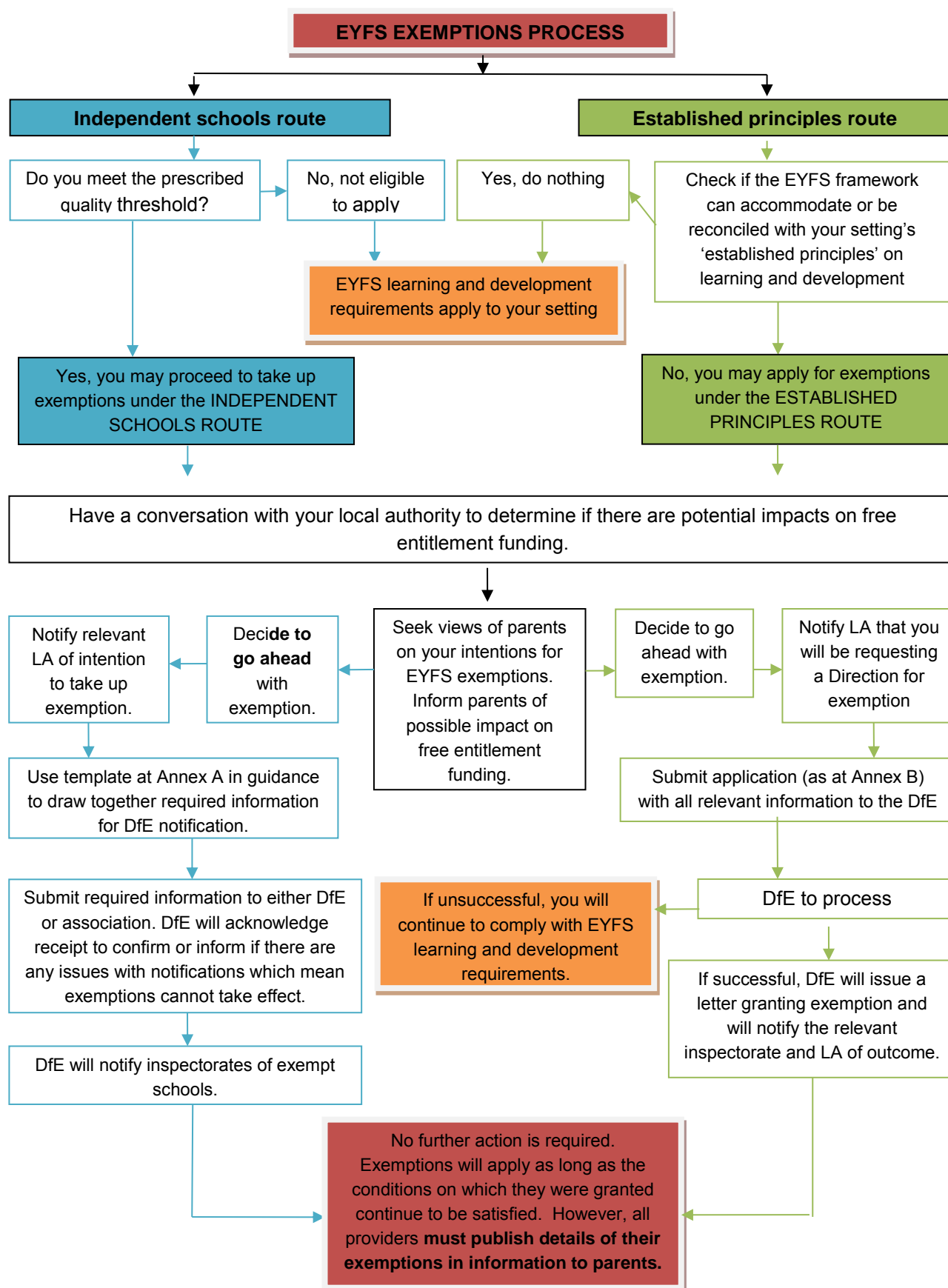
Notifications and applications for exemptions

15. Whenever possible, all applications or notifications of exemption should be submitted electronically to the Department for Education at the following email address: Exemptions.EYFS@education.gsi.gov.uk

If you need to submit an application or notification in hard copy, please send it to:

EYFS Exemptions Applications/Notifications
Foundation Years, Sure Start and Quality Division
Department for Education
Level 1, Sanctuary Buildings
Great Smith Street
London SW1P 3BT

Process for providers seeking exemptions: an overview



Notification process for the INDEPENDENT SCHOOLS ROUTE

16. If you are an independent school making an individual notification, you need to send an email to the dedicated inbox at Department for Education, Exemptions.EYFS@education.gsi.gov.uk with the following information:
- a. Name, registration, DfE and inspectorate URN numbers of the school.
 - b. Details of inspection judgements including the name of the inspecting organisation (as outlined under 8. above and in Annex A).
 - c. Confirmation that the relevant local authority has been notified of the intention to take up the exemption.
 - d. Indicate whether or not your school is in receipt of local authority funding for free early education places.
 - e. Confirmation that the views of parents have been sought.
 - f. Name and details of the responsible person at the school or association that is notifying the exemption.

The template in **Annex A** can be used by schools for the purposes of this notification. Although email is preferred, schools can post notifications to the address given at paragraph 13.

17. If your school is a member of an association and you want to take up an exemption through them, you will need to notify your association that you wish to take up an exemption and include the information above. Associations should then send the above information for each school in a single email to the Department informing schools of the operative date of notification. (The template in Annex A can also be used for this purpose although a spreadsheet format would be preferred for large numbers of schools. This can be discussed with the Department if necessary.)
18. The Department will pass on details of exempted schools to the relevant inspectorates as soon as possible so that they are aware of this ahead of inspections. If the Department does not receive a notification from a school it will not be legally exempted and will be inspected against all the learning and development requirements of the EYFS. Inspectorates will continue to monitor all schools against the safeguarding and welfare requirements of the EYFS.
19. An exemption is 'taken up' on the date that the notification is made to the Secretary of State, provided that all the conditions in this direction have been met. After the notification is submitted, the Department will check that the school notification meets the conditions of the Secretary of State's Direction for EYFS exemptions for independent schools. If the school does meet the conditions the inspectorate will be notified and the school or school association will receive an acknowledgement. If there are any issues with the information given, the school will also be contacted and further information may be necessary before the school can take up an exemption.
20. If, after an inspection, a school no longer qualifies for exemption because it no

longer meets the necessary requirements, it must inform both the Department and the relevant local authority that this is the case. The school must take steps to comply fully with the learning and development requirements of the EYFS as soon as possible.

Application process for the ESTABLISHED PRINCIPLES ROUTE

21. Once the provider has notified parents and the local authority of their intention to apply for exemptions, the provider must submit an application (as at **Annex B**) to the Department for Education with:

- a. Name, URN, address and type of early year provider and name and contact details of the registered person.
- b. Confirmation that the relevant local authority has been notified of the intention to take up the exemption. Provide contact details of the local authority so that the Department can notify the local authority if the application is successful.
- c. Indicate whether or not your school is in receipt of local authority funding for free early education places.
- d. The name of your inspecting organisation.
- e. Confirmation that the views of parents have been sought.
- f. Background information on the early years setting and evidence or information regarding the relevant principle which is irreconcilable with the EYFS learning and development requirements, such as published articles, books or information about any organisation of which the provider is a member.
- g. A list of the learning and development requirements (educational programme, early learning goal, and/or assessment requirement) for which the provider seeks an exemption or modification. A clear explanation of the rationale for seeking exemption from the particular learning and development requirement should also be given.
- h. Signatures from the registered person of the setting and another person who can confirm that the proper process has been followed in submitting the application. The second signature should normally be another person who forms part of the registered body of a setting or another early years professional.

22. Applications for exemption that do not contain all of the above elements will be returned with a request that the missing information be supplied.

23. Upon receiving an application, the Department for Education will process the application and check that it is complete. Providers should expect a decision from the Secretary of State within 12 weeks, and will be informed if their application is likely to take longer.

24. The Department will notify the provider, the local authority and the relevant inspectorate of the Secretary of State's decision. Exemptions may be granted in full or in part, or rejected. Until providers have received a response from the Department confirming any exemptions granted, they will not be legally exempt and will not be treated as such for the purposes of inspection.

What happens once an exemption is in place? (for both independent schools and established principle routes)

25. The provider must explain the outcome of the exemption notification/application to parents and make it clear in information provided to parents about their early years provision that an exemption is in place. The provider must ensure that information about the setting includes details of the exemption and what it means in practice, in particular any implications for free entitlement funding.
26. Ofsted or other relevant inspection bodies will take into account any exemptions that may be in place when planning and conducting inspections and may ask to see copies of letters granting exemptions, if applicable.
27. It is for local authorities to take decisions on whether to fund the free entitlement for early years providers which have been granted exemptions.

No Renewals Process

28. There is no renewals process for exemptions. Exemptions will remain in place for as long as the conditions upon which they were granted are satisfied by the provider and, in relation to schools exempt under the established principles route, as long as the provision is governed by established principles which cannot be reconciled with the learning and development requirements. Providers which no longer meet the conditions set out in the direction (or whose established principles can be reconciled with the learning and development requirements) for exemption are expected to meet the full EYFS learning and development requirements as soon as possible.

Guidance for local authorities

Local Authority role

29. Local authorities should be notified by providers when they are applying for or taking up exemptions from the EYFS via either the independent schools or established principles routes. Notification to the local authority is a requirement for providers to be granted exemptions.
30. Local authorities determine which providers in their area should be funded to deliver free early education places for 3 and 4-year-olds. Section 7 of the Childcare Act 2006 and the *Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008*¹² require local authorities to secure early years provision which delivers the EYFS, is not subject to an exemption, and is available free of charge to each child of the relevant age in the area. Local authorities must ensure that parents have the opportunity to take up their child's free early education place at a provider which delivers the full EYFS learning and development requirements. Local authorities must take account of the *Statutory Guidance for Local Authorities on the Delivery of Free Early Education for Three and Four Year Olds and Securing Sufficient Childcare*¹³ which makes clear that local authorities have discretion on whether to fund providers with exemptions.

¹² SI 2008/1724 <http://www.legislation.gov.uk/uksi/2008/1724/contents/made>

¹³ Statutory Guidance <https://www.education.gov.uk/aboutdfe/statutory/g00209650/code-of-practice-for-las>

Further Information

31. You can access relevant legislation here:

The Childcare Act 2006 <http://www.legislation.gov.uk/ukpga/2006/21/contents>

The Early Years Foundation Stage Statutory Framework – the revised framework introduced in 2012 -

<http://www.education.gov.uk/aboutdfe/advice/g00213120/eyfs-statutory-framework>

The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008 -

<http://www.legislation.gov.uk/uksi/2008/1743/contents/made>

The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) (Amendment) Regulations 2012 -

<http://www.legislation.gov.uk/search?title=&year=2012&number=2463&type=uksi>

Statutory Guidance for Local Authorities on the Delivery of Free Early Education for Three and Four Year Olds and Securing Sufficient Childcare - From September 2012 -

<https://www.education.gov.uk/publications/standard/EarlyYearseducationandchildcare/Page1/DFE-00066-2012>

The Local Authority (Duty to Secure Early Years Provision Free of Charge)

Regulations 2008 - <http://www.legislation.gov.uk/uksi/2008/1724/contents/made>

32. More information about the EYFS:

<http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/education/a0068102/early-years-foundation-stage-eyfs> .

Annex A - TEMPLATE FOR INDEPENDENT SCHOOLS MAKING NOTIFCATIONS OF EXEMPTION

NB: This template is available as a word document

at <http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/education/a0068102/early-years-foundation-stage-eyfs>

Name of school OR name of school association and schools included in this notification.	
School registration: LA code/ DfE establishment number eg 304/6500 (should be noted next to each school listed for associations)	
DfE URN Early years census number (should be noted next to each school listed for associations)	
Edubase URN number(s) NB Ofsted use the same number (should be noted next to <u>each</u> school listed for associations)	
Name of inspectorate which inspects school(s) (delete those which do not apply)	Independent Schools Inspectorate (ISI) Ofsted School Inspection Service (SIS) The Bridge Schools Inspectorate (BSI)
Details of most recent inspection judgements* (associations should mark inspections results next to each school listed)	Where the most recent inspection report contains a separate EYFS judgement. *Judgement against 'overall effectiveness of the EYFS' in most recent inspection report which contains this judgement (delete option which does not apply): Outstanding Good

	Date of report:
	<p>Where the <u>most recent</u> inspection report does not contain a separate EYFS judgement.</p> <p>*Judgement against:</p> <p>1. Quality of education provided (delete option which does not apply).</p> <p>Outstanding (or ISI equivalent e.g. 'excellent') Good</p> <p>2. Spiritual, moral, social and cultural development of pupils (delete option which does not apply).</p> <p>Outstanding (or ISI equivalent e.g. 'excellent') Good</p>
	Date of report:
	<p>For any inspection report dated after 1 January 2013 have you met Independent School Standard which specifically relates to the education of children below compulsory school age? Note: reports may only comment if this standard has <u>not</u> been met.</p> <p>YES/NO</p>
Local authority name and date of notification	<p>Name of LA:</p> <p>Date of notification:</p>
Are you currently (i.e. <u>prior</u> to taking up the exemption) funded by the local authority to deliver free early education places?	YES/NO
Have you/all schools met the legal requirement to seek the views of parents?	YES/NO

Responsible person (for school or association) and contact details	Name: Position: Telephone number: e-mail:
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#NB: Please remember to discuss any potential impact on the free entitlement funding with the local authority if relevant.

* Any school with an inspection judgement that is below good will not be eligible for exemption

Please send your completed electronic notification to Exemptions.EYFS@education.gsi.gov.uk

If you need to submit an application or notification in hard copy, please send it to:

EYFS Exemptions Applications/Notifications
 Foundation Years, Sure Start and Quality Division
 Department for Education
 Level 1, Sanctuary Buildings
 Great Smith Street
 London SW1P 3BT

Annex B EARLY YEAR FOUNDATION STAGE (EYFS) EXEMPTION APPLICATION FORM – ESTABLISHED PRINCIPALS ROUTE

You must complete this form in full in order for your application to be considered.

NB: This template is available as a word document

at <http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/education/a0068102/early-years-foundation-stage-eyfs>

Provider Details

Name of provider	
URN (Ofsted)	
Address of provision	
Registered person	
Contact email	
Contact telephone number	
Type of provision (delete as applicable)	Maintained school / Independent school / Full daycare / Sessional daycare / Childminding / Children's Centre / Other
Name of relevant local authority (LA), contact name and number, and date the LA was notified of exemption being sought.*	Local Authority: Contact name: Tel number: Date notified:
Are you currently funded by the LA to deliver free early education places?	YES/NO

Name of inspectorate that inspects the provider (delete those which do not apply)	Independent Schools Inspectorate (ISI) Ofsted School Inspection Service (SIS) The Bridge Schools Inspectorate (BSI)
Have you met the legal requirement to seek the views of parents? (delete as applicable)	YES/ NO

***NB: please remember to discuss any potential impact with free entitlement funding with the local authority if relevant.**

Exemptions / Modifications Requested

Please complete the boxes below for each exemption being sought, using additional boxes if necessary. **Evidence will need to be submitted for each individual element of the EYFS for which an exemption is sought. Please include any relevant supporting documents with the application.**

The learning and development requirement (educational programme, early learning goal, profile assessment) affected	
Exemption / Modification sought	

Reason why exemption is needed and how the exemption will affect children's experience.	
--	--

If you are seeking exemption for additional elements of the EYFS learning and development requirements please replicate more boxes below or add an additional sheet.

PLEASE CHECK THAT YOU HAVE COMPLETED EVERY BOX AND ENCLOSED ANY NECESSARY INFORMATION AS INCOMPLETE APPLICATIONS WILL BE REJECTED.

I confirm that all the information requested is enclosed and is a fair and accurate view of the provider and of the reasons why an exemption is sought.

Signed: _____ (Registered person)

Position: _____

Date: _____

Signed: _____ (Counter signatory)

Position: _____

Date: _____

Please send your completed electronic application to Exemptions.EYFS@education.gsi.gov.uk

If you need to submit an application or notification in hard copy, please send it to:

EYFS Exemptions Applications/Notifications
Foundation Years, Sure Start and Quality Division
Department for Education
Level 1, Sanctuary Buildings
Great Smith Street
London SW1P 3BT

Annex C - Draft Direction from the Secretary of State to independent schools

Dear colleague,

EXEMPTION FROM THE LEARNING AND DEVELOPMENT REQUIREMENTS OF THE EARLY YEARS FOUNDATION STAGE: DIRECTION TO INDEPENDENT SCHOOLS

I am writing to set out the circumstances and conditions under which independent schools may be exempt from the learning and development requirements of the Early Years Foundation Stage.

Section 46 of the Childcare Act 2006 gives the Secretary of State the power to confer exemptions from the learning and development requirements of the Early Years Foundation Stage in prescribed circumstances. These circumstances are set out in the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008¹⁴ ("the Regulations"), as amended by the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) (Amendment) Regulations 2012¹⁵. The amendments came into force on 26 October 2012. From the date of this direction, a school which satisfies all the relevant conditions may take up an exemption from the learning and development requirements of the EYFS.

Schools wishing to continue to follow the learning and development requirements of the EYFS should take no action and will be assumed by the Department and relevant inspectorate to be following the EYFS in full.

Early Years Foundation Stage

The Early Years Foundation Stage (EYFS¹⁶) sets out both learning and development requirements and safeguarding and welfare requirements for children from birth to 31 August following their fifth birthday. There is no exemption from the safeguarding and welfare requirements.

Independent School Standards

The Secretary of State has prescribed the independent school standards ("ISS") in the Education (Independent School Standards) (England) Regulations 2010 (as amended) (the "ISS Regulations")¹⁷. Any independent school taking up an exemption must

¹⁴ SI 2008/1743

¹⁵ SI 2012/2463

¹⁶ <http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/education/a0068102/early-years-foundation-stage-eyfs>

¹⁷ SI 2010/1997, as amended by S.I. 2012/979

continue to comply with the ISS for children aged 3 and above, as well as the safeguarding and welfare requirements of the EYFS, and together these will form the basis for inspection of the early years provision.

Scope of the Direction

All schools which are independent schools¹⁸ but not Academies¹⁹ (including Free Schools) may be exempt if they meet the conditions set out below. This Direction confers exemptions from **all** of the learning and development requirements of the EYFS. Only early years provision for children who have reached the age of 3 is exempt. Further clarity on this matter can be found in the guidance.

Conditions schools must meet in order to take up exemptions

The Regulations, as amended, allow the Secretary of State to impose conditions on making a direction for exemption for independent schools. These are as follows:

Seeking views of parents and notifying relevant bodies

- a. A school must seek the views of the parents of children for whom the early years provision is provided as to whether they should take up an exemption.
- b. A school must inform the relevant local authority that it intends to notify the Secretary of State that it wishes to take up an exemption.
- c. A school must notify the Secretary of State that it wishes to take up an exemption.

Quality requirements

Furthermore, all schools are subject to the following conditions concerning the quality of the education and associated provision at the school:

Quality is determined by the School's most recent inspection report:

- I. for a school where this report still contains a separate EYFS judgment, the school must have received a judgment of 'good' or better against 'overall effectiveness of the EYFS';
- II. for a school where this report does not have a separate EYFS judgment, the school must have received judgments of 'good' or better against parts 1 ('quality of education provided') and 2 ('spiritual, moral, social and cultural development of pupils') of the ISS.

For any exemption taken up where the most recent inspection report dates after **1st January 2013**, the report must show that the school meets any standard under Part 1 of the ISS Regulations, relating to the education of children below compulsory school age. (Inspection reports may only comment if this standard has not been met.)

¹⁸ As defined in section 463 of the Education Act 1996

¹⁹ As defined in section 579(1) of the Education Act 1996

Information for parents

It is also a condition of exemption that a provider with an exemption must make it clear in any information published for parents about the early years provision that the provision is subject to an exemption.

Making a notification to the Department

Notifications to the Secretary of State of the intention to take up an exemption should be made to Exemptions.EYFS@education.gsi.gov.uk or may be made via your association, if relevant. Notifications must contain details of the school's last inspection report. This can be done using the template issued by the Department as part of the guidance to providers on exemptions.

An exemption is 'taken up' on the date that the notification is made to the Secretary of State.

Maintaining an exemption

Once a school has taken up an exemption, it must continue to meet the conditions set out under the 'Quality requirements' heading above. Any school which does not meet these quality conditions will no longer be eligible for exemption and must re-introduce the learning and development requirements of the EYFS in full. A school which is no longer able to satisfy the quality conditions must notify the Department and the relevant local authority that this is the case.

If you have any queries about the content of this letter, they should be directed to Exemptions.EYFS@education.gsi.gov.uk.

ELIZABETH TRUSS MP

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Any enquiries regarding this publication should be sent to us at EYFS Team, Foundation Years: Sure Start and Quality Division, Department for Education, 1st floor, Sanctuary Buildings, Great Smith Street, London SW1P

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